



**KIRKLEES COUNCIL
CHILDREN AND YOUNG PEOPLE SERVICE**

**DISCIPLINARY PROCEDURE
(FOR SCHOOLS)**

MAY 2008

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DISCIPLINARY PROCEDURES FOR EMPLOYEES

1. INTRODUCTION

- 1.1 These procedures apply to all school based employees who are directly managed by the school. The procedures will apply unless, due to the nature of the school, the school have their own Disciplinary Procedure. Nothing in these procedures is intended to contravene the statutory rights, duties and obligations of Head Teachers and Governing Bodies as set out in the Articles of Government of each school.
- 1.2 In this procedure the word employee will include Deputy Head Teachers and Head Teachers. Where the Head Teacher is alleged to have committed an act of misconduct the Chair of Governors will take the place of the Head Teacher as the person taking action in accordance with the Articles of Government.
- 1.3 The following formal disciplinary procedures are used where informal attempts to improve conduct are either not appropriate, have failed, or the misconduct is too serious to resolve the matter. Advice can be obtained from Human Resources regarding how to deal appropriately with alleged misconduct and it is strongly recommended that a HR Advisor should be involved in the formal procedures.

2. PURPOSE AND SCOPE

- 2.1 It is recognised by the parties to this agreement that discipline is necessary for the conduct of the School affairs and for the safety and well being of its employees and pupils. It is the purpose of this procedure to ensure that a fair and consistent procedure is applied to all employees, having regard to the nature of their employment, when allegations of misconduct are investigated and also that fair and consistent action is taken where breaches of discipline occur. The object of the procedure is to encourage improvement in the employee's conduct.
- 2.2 In many instances of minor misconduct, disciplinary action in a formal sense is inappropriate. Frequently the matter can be dealt with entirely informally between the Head and the employee.
- 2.3 The following procedures are for use in cases of alleged misconduct where informal action has failed or is not appropriate. They advise employees of the kinds of acts and behaviour which the employer considers may constitute a breach of discipline, and define broadly those breaches of discipline of such a serious nature, that the Employer considers they may result in the summary dismissal of an employee.
- 2.4 Where a complaint concerns an employee's professional competence the matter should be dealt with under the competence/capability procedure.
- 2.5 To provide the means whereby employees may appeal against disciplinary action taken against them.

- 2.6 **THE OPERATION OF THIS DISCIPLINARY PROCEDURE NEEDS TO BE TAKEN IN CONSIDERATION OF AND IN CONJUNCTION WITH THE “GUIDANCE NOTES FOR HEAD TEACHERS, CHAIRS OF GOVERNING BODIES AND GOVERNORS INVOLVED IN DISCIPLINARY MATTERS”. CONSIDERATION NEEDS TO BE GIVEN, WHERE APPLICABLE, TO OTHER PROCEDURES E.G. COMPETENCE/CAPABILITY**

3. **PROCEDURE: ALLEGATION OF MISCONDUCT**

3.1 **When Allegations Are Made**

When an allegation of misconduct is made it first needs to be established whether the facts are straightforward or whether a preliminary investigation is required.

Where this is necessary it should be undertaken by the Headteacher or nominated representative (e.g. Deputy/Assistant Headteacher). The purpose of this preliminary investigation is to gain information to evaluate how serious the allegation(s) are and whether there may be some substance to them. This is not a comprehensive investigation and statements should not be taken.

NB: No disciplinary action will be taken before a full investigation and a formal disciplinary hearing has been held.

3.2 **Establishing the Facts**

The employee against whom misconduct is alleged may be interviewed by the Head Teacher or nominated representative where the issues are straightforward to enable the Headteacher to reach a view as to the seriousness of the allegation(s). Where the case is more complex an independent investigating officer may be provided by the LA and/or Human Resources. The employee will also be invited to state his/her explanation of the events involved in the allegation as part of the formal investigation. Other relevant witnesses may also be interviewed by the Head Teacher/Investigating Officer to enable the initial findings to be established within the preliminary investigation.

3.3 **Child Protection/Safeguarding Issues**

If information is provided, or allegations are made, which relate to possible emotional, physical or sexual abuse of a child it is essential that this information is notified to, and shared with, the Service Manager, Education Access, or Local Authority Designated Officer in accordance with the “Safeguarding Procedures” (Tel: 860/1919) who will, if appropriate, report the case to the Local Authority Designated Officer, Human Resources and the Learning Service.

3.4 Criminal Offences

When an alleged criminal offence takes place while the person is on duty, and the matter is being investigated by the Police (including child protection/Safeguarding issues) the Head Teacher/Governing Body should await the outcome of these investigations before proceeding with a disciplinary investigation/hearing. It may be appropriate to suspend the member of staff until the outcome of the Police investigation is known.

There might be a connection between an allegation of an employee's criminal offence committed while not on duty, and their ability or suitability for continued employment at the school, particularly if the allegation relates to abusive, inappropriate or unprofessional behaviour.

Such allegations should normally be investigated and considered within the framework of these procedures. In cases of child protection, the matter should be referred to the "Safeguarding Procedures".

3.5 Suspension

Suspension is a neutral act designed to allow a full and fair investigation to take place whilst the employee is not at work.

An employee may be suspended on full pay by the Governing Body (or the Headteacher on the Governing Body's behalf) or in accordance with the relevant Articles of Government where the alleged offence carries the possibility of dismissal, or where there are grounds for doubt as to the suitability of the employee to continue at work, for example, an investigation into alleged misconduct or criminal investigation involving the employee either at work or whilst off duty.

When the employee being suspended is the Headteacher, this decision should be taken by the Chair of Governors, on behalf of the Governing Body and with due regard to Local Authority advice.

Consideration may be given to relocating an employee as a substitute for suspension. Alternatively, discussions may take place to consider whether it is appropriate for the employee to take up an alternative role as a substitute for suspension.

Where the employee is at work when the suspension takes place, the Head Teacher should explain verbally the reasons for the suspension, and follow that up with a letter of explanation. Where possible a recognised Trade Union representative/professional association or work colleague not involved in the allegations or investigation should be entitled to accompany the employee. In exceptional circumstances, if the employee is not at school, the suspension may be issued by telephone and recorded delivery letter.

The employee should be advised to contact his/her Trade Union representative/professional association and an LA contact will be given who will not be involved in the disciplinary investigation/hearing but who will keep the employee informed of progress. Where the suspension involves

Child Protection/Safeguarding allegations, the procedure held in the Safeguarding Procedure Handbook should be followed.

An employee does not have a right of appeal against the decision to suspend as suspension is not a sanction but is viewed as a neutral act, in order to facilitate carrying out proper procedures/an investigation. Since suspension is rarely seen by employees in such neutral terms it will be necessary to explain carefully that it is in fact a precautionary act and nothing more. Also, that it in no way prejudices the outcome of any investigation, and that it is an act that enables an investigation to proceed with minimal disruption to the school concerned. However, the suspension will be kept under review by the Head Teacher and may be lifted at any time if the initial reasons for suspending the employee are no longer felt to apply.

3.6 Investigation

Serious thought needs to be given as to what is being investigated and who should carry out the investigation as well as how much investigation is necessary. In most cases it would be expected that Deputy/Assistant Headteachers would conduct the investigation, with appropriate support and advice from HR. This would ensure that Headteachers could remain impartial and able to chair any subsequent Disciplinary Hearing in a fair and objective manner. (NB: where allegations of gross misconduct are substantiated by an investigation then any subsequent Disciplinary Hearing would be heard by the Staffing Dismissals Committee). In exceptional cases the investigation may be undertaken jointly with the appropriate Trade Union/professional association under agreed clear terms of reference. Reference needs to be made to the "Guidance Notes for Head Teachers, Chairs of Governing Bodies and Governors Involved in Disciplinary Matters" section 5 – "Investigation Stage", and to "Guidance Notes – Conducting Investigations and Handling Complaints". These procedures are available electronically on "EDNET" under "Personnel Procedures".

NB: In order that all investigations are completed within an appropriate timescale without any unnecessary delays, investigations should continue during school holiday periods, including obtaining witness statements from employees. Any refusal by an employee to participate in an investigation during school holiday periods should be noted.

3.7 Notice for Disciplinary Hearing

To allow sufficient time for the individual to consider the allegations and to arrange representation, a minimum of ten working days written notice should normally be given prior to the Disciplinary Hearing depending on the complexity of the case. Where practicable more notice can be given. In circumstances where all parties agree to an earlier resolution of the matter a shorter notice period may be agreed. The letter requiring the employee to attend the hearing will clearly outline the relevant allegations. The employee will be advised that they have the right to be represented by a recognised Trade Union representative/professional association, or a work colleague not involved in the allegation/investigation.

3.8 Taking Disciplinary Action

No disciplinary decision will be taken in relation to an employee until the case has been fully investigated and a formal disciplinary hearing has been held.

No disciplinary sanction will be taken against a Trade Union representative until the circumstances of the case have been discussed with a full time official of the Trade Union/professional association concerned.

A HR Advisor should be involved in cases dealt with under the formal procedures. After hearing all the facts of the case, where it is established that the employee has committed misconduct, a disciplinary sanction may be given, having regard to all the circumstances, including gravity of the misconduct, previous misconduct and the general record of the employee. If the misconduct is related to the abuse or misuse of drugs or alcohol, the Drugs and Alcohol Policy must be considered before disciplinary action is taken. Failure to abide by an alcohol contract, however, may lead to disciplinary action.

The Head Teacher will determine whether disciplinary action short of dismissal is the appropriate action or whether to recommend dismissal, either in cases of "Gross Misconduct" or where the Headteacher has had significant prior involvement, to the Governing Body. Where the Investigating Officer's Report to the Head Teacher indicates that there could be a prima facie case of "Gross Misconduct" the case could be referred direct to the Staffing Dismissals Committee of the Governing Body for the case to be heard in that forum.

3.9 Delegation of Power to Dismiss

The Education Act 2002 allows the decision to recommend dismissal of an employee to be delegated from the Governing Body to a Headteacher, an individual Governor or a group of Governors with or without the Headteacher (with the exception of the dismissal of the Headteacher).

The Authority does not, in principle, recommend the delegation of the authority to dismiss. Also, in practical terms, and, where dismissal is possible, the Headteacher would normally have had some involvement in the issue/investigation as the manager of the school.

In such circumstances it would not therefore be appropriate for this decision making to be delegated and should remain with the Governing Body.

FRAMEWORK FOR DISCIPLINARY ACTION

Disciplinary Offence	Disciplinary Action	Person(s) taking the action
a) Minor Offence	<p>Recorded Verbal Warning – the employee should be advised in writing that the warning is to be recorded, and the letter should include:</p> <ul style="list-style-type: none"> - The cause or nature of offence - The misconduct alleged - The findings with respect to the misconduct - The decision (to issue a warning at this level) - The course of action to be followed - The time scale for improvement (where appropriate) - Instructions regarding future conduct - Any assistance the Authority may be in a position to offer (where appropriate) - The right of appeal against the decision 	Head Teacher
b) Repetition of the above or a more serious offence	Written warning(s) – The written warning(s) shall also include the above details.	Head Teacher
c) Repetition of misconduct following a written warning(s) or a first offence which is considered serious misconduct	Final written warning. The Director for Children and Young People Service should receive a copy of any final written warning. (The format of the final warning should be similar to that of the above warnings)	Head Teacher
d) Repetition of an offence resulting in final written warning or serious misconduct of a different nature following a final written warning	Dismissal with notice	Head Teacher will recommend dismissal to a sub-committee of the Governing Body appointed for that purpose. This sub committee should be the staffing sub committee and should constitute three Governors, but not staff Governors. Where that is proving difficult to arrange you should seek HR advice.
e) Gross misconduct	Dismissal without notice	Ditto

3.10 **Alternative in Substitution of Dismissal**

If the Governing Body reaches a decision to recommend dismissal, depending on the circumstances of the case and the mitigation presented, one or more of the following alternatives may be given along with a final Written Warning, in substitution of dismissal.

- i) A period of suspension without pay.
- ii) Demotion to a lower graded post.
- iii) Transfer to a different work location.

There is no appeal right against the alternative as this is an agreed variation to contract. The only appeal is against the original decision to dismiss, therefore should the employee wish to appeal, the decision to dismiss will stand and take effect.

4. **SICKNESS ABSENCE DURING DISCIPLINARY INVESTIGATION/HEARING**

- 4.1 Where an employee reports sick and is in receipt of a GP's Sick Note the initial response is to postpone proceedings where the absence is likely to be of short duration, although this can lead to uncertainty as to when a Hearing can be arranged.
- 4.2 Consideration needs to be given within the context of appropriate standards of fairness and natural justice.
- 4.3 If it becomes apparent that the absence is likely to be of a long duration, consideration must be given to referring the employee to Employee Healthcare so as to gain a medical view of the employee's state of health, and the likelihood and timescales involved in them being fit enough to be able to cope with the necessary processes.
- 4.4 The Headteacher must contact Personnel to arrange for a referral to be made to the Employee Healthcare Unit and will provide a resume to Personnel to accompany the documentation of the case to the Occupational Health Physician.
- 4.5 The Headteacher will inform and explain to the employee that they will receive details of the appointment from the Employee Healthcare Unit through the post to their home address.
- 4.6 The Occupational Health Physician may require a report from an employee's own GP or Consultant/Specialist in which case the employee will be requested to complete a Medical Consent Form by the Occupational Health Physician at the first appointment.
- 4.7 The Employee can opt to see any report requested from the their own GP by the Occupational Health Physician and can ask the GP to amend any part of such a report or can submit a statement outlining such disagreement. Alternatively the employee can refuse approval for such a report that is felt to be harmful to an individual.

- 4.8 If the employee refuses permission for the Occupational Health Physician to obtain a medical report from their GP, procedures may be pursued in the absence of, and without the benefit of, a medical report.
- 4.9 If at the outset, or at any subsequent stage, the employee declines to co-operate with the medical procedures, the matter will be left in abeyance for at least 10 working days in order to allow the employee to take the advice of their medical practitioner and/or Trade Union Representative. If the employee still declines to co-operate then formal procedures will commence/continue.
- 4.10 If the Occupational Health Physician or other medical advisor indicates that the employee is unlikely to be fit to attend for work, or is unlikely to be fit within a reasonable length of time, or return is indeterminable, or the fact that pending action is contributing to the length of absence, a decision may be taken to go ahead with the formal procedures in the absence of the employee, but full opportunity will be given for the employee to be fully represented by their Trade Union or accompanied by a work colleague not involved in the allegations/investigations.
- 4.11 They may seek further independent advice where the Occupational Health Physician considers the employee fit to participate in formal processes but this opinion is not shared by the employee or the employee's medical advisers.
- 4.12 Reasonable opportunity must be given for employees to personally state their own case; obviously where the employee is on sickness absence the employee cannot comply with this. The reasonableness of this will be judged by the length of their absence (as known/expected) at the time of the hearing against all other considerations. If the employee's return is not expected in the short term, it may be fair to go ahead with the hearing once the employee and their Trade Union representative or professional association have been advised. The employee's Trade Union representative or professional association must be given full opportunity to present the employee's case.

5. APPEALS

- 5.1 An employee is entitled to appeal to the Staffing Committee of the Governing Body against a formal disciplinary decision of the Head Teacher.
- 5.2 Where the disciplinary decision was taken by the Staffing Committee, including a decision to recommend dismissal, the employee has the right to appeal to the full Governing Body (less those involved in making the original decision). If more than 3 Governors have made the original decision, the members of the Appeal Panel should be made up of the same number of Governors that sat at the Disciplinary Hearing, with the chair of the original Hearing attending the Appeal to present information explaining the reasons why the original decision was made.
- 5.3 Where an employee wishes to appeal against a disciplinary decision such an appeal is to be referred, normally within fifteen working days of the employee's receipt of the letter confirming the decision, to the Chair of the Governors for submission to the Governing Body. The appeal shall be in

writing and shall specify the grounds for the appeal. No person who heard an earlier disciplinary hearing may take part in the decision at a later disciplinary hearing or an appeal.

5.4 Notice For Appeal Hearing

To allow sufficient time for the preparation for an Appeal Hearing a minimum of twenty working days notice should be given and relevant documentation should be exchanged ten working days prior to the hearing.

5.5 Review of Appeal Against a Disciplinary Decision

When a disciplinary decision has been reviewed, or where an employee has successfully appealed against a disciplinary, all references thereto will be removed from the employee's personal records wherever they are held.

6. PROCEDURES FOR THE CONDUCT OF DISCIPLINARY HEARINGS AND APPEALS BY GOVERNING BODIES

Disciplinary Hearings by a Governing Body Committee and appeals against dismissal or other disciplinary action will be dealt with in accordance with the "Guidance Notes for Head Teachers, Chairs of Governing Bodies and Governors Involved in Disciplinary Matters", in particular paragraph 11 – "Checklist – Chairing Disciplinary Hearings". This can be found in the "Personnel Procedures for Schools" manual, a copy of which is available in school.

7. ALLEGATIONS OF MISCONDUCT AGAINST A HEAD TEACHER

7.1 Similar principles must apply to allegations of misconduct against a Head Teacher except that the Chair of Governing Body will initiate the investigation in conjunction with the Director of Children & Young People Service or their nominated representative. Where suspension is necessary the Chair of the Governing Body will take the action in conjunction with the Director of Children and Young People Service or their nominated representative in accord with the articles of government.

7.2 All disciplinary hearings involving Head Teachers will be heard by the appropriate committee of the Governing Body.

8. DISCIPLINARY RECORDS

8.1 Recorded verbal warnings will normally be disregarded for the purpose of 'totting up' after 6 months.

8.2 Written warnings will, except where there are exceptional circumstances such as a serious concern about the safety of children, or evidence of a repeated pattern of mis-conduct following spent warnings, will normally be disregarded after 12 months if, during this period, there has been no cause for further disciplinary action.

8.3 Final written warnings will, except where there are exceptional circumstances such as a serious concern about the safety of children, or evidence of a repeated pattern of misconduct following spent warnings,

normally be disregarded after 18 months if, during this period, there has been no cause for further disciplinary action.

- 8.4 Relevant previous warnings may be referred to in any future Disciplinary Hearings for the purposes of identifying a person's employment record and will remain on the personal file. These are unlikely to be referred to except in exceptional circumstances, for example, in child protection cases, and they will not be used for the purposes of 'totting up' warnings if outside of the timescales above.

9. **OFFENCES WARRANTING DISCIPLINARY ACTION**

Employees are expected to maintain professional standards in accordance with the duties and responsibilities set out in the Employees' Pay and Conditions of Service Act. Breaches of conduct which are considered by the Employer to be sufficiently serious to render an employee liable to disciplinary action are shown in Appendix A, although this is not an exclusive or exhaustive list.

Breaches of conduct which could warrant dismissal because they constitute Gross Misconduct are shown in Appendix B. Again this is not an exclusive or exhaustive list.

Circumstances Warranting Disciplinary Action

The following list is for guidance purposes only and is not intended to be an exclusive or exhaustive list. It gives examples of the types of misconduct which are considered by the Council as sufficiently serious to render the employee liable to formal disciplinary action. There will be other types of misconduct not on the list, which warrant disciplinary action. All the relevant circumstances of each particular case must be taken into account.

1. Persistently failing to be in attendance at the place of work at the required time.
2. Being absent from work without prior permission being given for the absence, or failing to obtain the necessary permission.
3. Unreasonable failure to report absence from work on the first day of such absence.
4. Failure to report arrival and departure from work by the means required by the School/Local Authority.
5. Failing to conform to the working practices or procedures laid down as required by the Head Teacher.
6. Refusing to carry out a reasonable instruction.
7. Acting in any way prejudicial to the School's or the Local Authority's interests in dealing with members of the public, suppliers, or other outside contacts.
8. Unauthorised use of the School's or Local Authority's property, goods or vehicles.
9. Failure to take reasonable care of the School's or Local Authority's property.
10. Wilfully failing to maintain an acceptable standard or level of performance.
11. Using threatening or abusive language or conduct.
12. Acting in any way which would constitute a risk to the health or safety of the employee concerned, or any other person, whilst on the School or Local Authority's premises or on the School or Local Authority's business.
13. Communicating confidential information without authority to any person not entitled to receive it.
14. Harassment against other employees, recipients of the School's or Local Authority's Services or members of the public, in contravention of the School's or Local Authority's Policies.
15. Discrimination or victimisation against other employees, recipients of the School's or Local Authority's Services or members of the public, in such a way, which contravenes the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, The Employment (Sexual Orientation and Religion or Belief) Regulations 2003, The Employment (Age) Regulations 2006, any other anti discrimination legislation or any of the Council Policies on equal opportunities.

16. Failure to comply with the School's/Local Authority's procedure on use of computers and information technology.
17. Failure to report malpractice or misconduct by employees or contractors.
18. Failure to comply with the duty to report, to an appropriate person or body, concerns of physical or sexual abuse of a child or vulnerable adult by a member of staff, or other person having contact with the child or vulnerable adult.

Circumstances Warranting Dismissal

The following list is for guidance purposes only and is not intended to be an exclusive or exhaustive list. It gives examples of the types of misconduct which could warrant dismissal because they constitute gross misconduct. There will be other types of misconduct not on the list which warrant disciplinary action. All the relevant circumstances of each particular case must be taken into account.

1. The theft of, unauthorised possession of, or wilful damage to property belonging to the School, Local Authority, its suppliers, members of the public or any other employee.
2. Deliberate falsification of School or Local Authority documents, for example, attendance sheets, subsistence, travel or other expense claims.
3. The fraudulent obtaining of money or other property from the School, Local Authority, its suppliers or members of the public.
4. The commission of an assault on any person or indecent behaviour by an employee whilst on the School's or Local Authority's premises or on the School's or Local Authority's business.
5. The consumption of alcoholic beverages, or drugs not prescribed by a medical practitioner, which reduces the ability of the employee to work with due regard for the safety and welfare of themselves and others whilst at work or on the School's or Local Authority's premises.
6. Unauthorised drinking during working hours or being under the influence of alcohol or a drug as per 5. above whilst at work or on the School's or Local Authority's premises.
7. Other than in the performance of normal duties using or releasing to the public any information which the School or Local Authority has designated as confidential without express written permission.
8. The commission of a criminal offence which renders the employee unsuitable or unable to carry out the duties for which they are employed.
9. The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal.
10. The commission of a serious breach of duty prejudicial to the School's or Local Authority's relations with members of the public or other outside contacts, or any wilful attempt to damage the standing or position of the School or Local Authority.
11. Serious harassment against other employees, recipients of the School's or Local Authority's Services or members of the public, in contravention of the School's or Local Authority's Policies.
12. Serious discrimination or victimisation against other employees, recipients of the School's or Local Authority's Services or members of the public in such a way which contravenes the Race Relations Act 1976, the Sex Discriminations Act 1975, the

Disability Discrimination Act 1995, The Employment (Sexual Orientation and Religion or Belief) Regulations 2003, The Employment (Age) Regulations 2006, any other anti discrimination legislation or any of the Council's policies on equal opportunities.

13. Action or conduct which could be considered as gross negligence.
14. Serious or consistent failure to comply with the School's/Local Authority's policies and procedures on the use of computers and information technology.
15. Failure to comply with the duty to report, to an appropriate person or body, knowledge of physical or sexual abuse of a child or vulnerable adult by a member of staff, or other person having contact with the child or vulnerable adult.
16. Sending material with a content which contravenes a School/Local Authority policy. This includes the dissemination of offensive and obscene materials.
17. Actions by the employee that lead to an irretrievable breakdown of trust and confidence in their ability to carry out their role within the school.

DURATION OF DISCIPLINARY SANCTIONS

1. Where a Disciplinary Hearing results in a disciplinary sanction being applied to an employee then this will remain 'live' on the employee's personal file for the following period of time:-

- A Recorded Verbal Warning - 6 months
- A Written Warning - 12 months
- A Final Written Warning – 18 months